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SENATE BILL 5507

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Kline, Kohl-Welles, Fairley, Pridemore and Jacobsen

Read first time 01/22/2007.      Referred to Committee on Government Operations & Elections.

1            AN ACT Relating to Washington's vesting laws; amending RCW  
2 58.17.033, 19.27.095, 36.70A.302, and 80.50.100; adding a new section  
3 to chapter 36.70B RCW; and repealing RCW 36.70B.170, 36.70B.180,  
4 36.70B.190, 36.70B.200, and 36.70B.210.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            **Sec. 1.** RCW 58.17.033 and 1987 c 104 s 2 are each amended to read  
7 as follows:

8            (1) A proposed division of land, as defined in RCW 58.17.020, shall  
9 be considered under the subdivision or short subdivision ordinance, and  
10 zoning or other land use control ordinances, in effect on the land at  
11 the time (~~a fully completed application for preliminary plat approval~~  
12 ~~of the subdivision, or short plat approval of the short subdivision,~~  
13 ~~has been submitted to the appropriate county, city, or town official.~~

14            ~~(2) The requirements for a fully completed application shall be~~  
15 ~~defined by local ordinance))~~ the county, city, or town legislative body  
16 acts on the application for preliminary approval as provided in RCW  
17 58.17.110.

18            ~~((3))~~ (2) The limitations imposed by this section shall not  
19 restrict conditions imposed under chapter 43.21C RCW.

1       (3) If, prior to final plat approval and prior to substantial  
2 construction of the plat in good faith reliance on the preliminary plat  
3 approval, the development regulations applicable to the property are  
4 changed, the preliminary plat shall be revised to be consistent with  
5 the new development regulations.

6       **Sec. 2.** RCW 19.27.095 and 1991 c 281 s 27 are each amended to read  
7 as follows:

8       (1) A valid and fully complete building permit application for a  
9 structure, that is permitted under the zoning or other land use control  
10 ordinances in effect on the date of the application shall be considered  
11 under the building permit ordinance in effect ~~((at the time of~~  
12 ~~application))~~ on the day the application is approved or denied, and the  
13 zoning or other land use control ordinances in effect on ~~((the date of~~  
14 ~~application))~~ that day.

15       (2) The requirements for a fully completed application shall be  
16 defined by local ordinance but for any construction project costing  
17 more than five thousand dollars the application shall include, at a  
18 minimum:

19       (a) The legal description, or the tax parcel number assigned  
20 pursuant to RCW 84.40.160, and the street address if available, and may  
21 include any other identification of the construction site by the prime  
22 contractor;

23       (b) The property owner's name, address, and phone number;

24       (c) The prime contractor's business name, address, phone number,  
25 current state contractor registration number; and

26       (d) Either:

27       (i) The name, address, and phone number of the office of the lender  
28 administering the interim construction financing, if any; or

29       (ii) The name and address of the firm that has issued a payment  
30 bond, if any, on behalf of the prime contractor for the protection of  
31 the owner, if the bond is for an amount not less than fifty percent of  
32 the total amount of the construction project.

33       (3) The information required on the building permit application by  
34 subsection (2)(a) through (d) of this section shall be set forth on the  
35 building permit document which is issued to the owner, and on the  
36 inspection record card which shall be posted at the construction site.

1 (4) The information required by subsection (2) of this section and  
2 information supplied by the applicant after the permit is issued under  
3 subsection (5) of this section shall be kept on record in the office  
4 where building permits are issued and made available to any person on  
5 request. If a copy is requested, a reasonable charge may be made.

6 (5) If any of the information required by subsection (2)(d) of this  
7 section is not available at the time the application is submitted, the  
8 applicant shall so state and the application shall be processed  
9 forthwith and the permit issued as if the information had been  
10 supplied, and the lack of the information shall not cause the  
11 application to be deemed incomplete for the purposes of vesting under  
12 subsection (1) of this section. However, the applicant shall provide  
13 the remaining information as soon as the applicant can reasonably  
14 obtain such information.

15 (6) If, prior to substantial construction in good faith reliance on  
16 the building permit, the applicable development regulations are  
17 changed, the building permit shall be revised or rescinded as necessary  
18 to be consistent with the new development regulations.

19 (7) The limitations imposed by this section shall not restrict  
20 conditions imposed under chapter 43.21C RCW.

21 NEW SECTION. **Sec. 3.** A new section is added to chapter 36.70B RCW  
22 to read as follows:

23 (1) An application for a project permit shall be considered under  
24 the development regulations in effect on the land at the time the local  
25 government takes final action on the application, including ruling on  
26 any lawful requests for reconsideration and any decisions made after  
27 review and remand by an appellate body.

28 (2) If prior to substantial construction in good faith reliance on  
29 the project permit the development regulations applicable to the  
30 property are changed, the project permit shall be revised or rescinded  
31 as necessary to be consistent with the new development regulations.

32 **Sec. 4.** RCW 36.70A.302 and 1997 c 429 s 16 are each amended to  
33 read as follows:

34 (1) A board may determine that part or all of a comprehensive plan  
35 or development regulations are invalid if the board:

1 (a) Makes a finding of noncompliance and issues an order of remand  
2 under RCW 36.70A.300;

3 (b) Includes in the final order a determination, supported by  
4 findings of fact and conclusions of law, that the continued validity of  
5 part or parts of the plan or regulation would substantially interfere  
6 with the fulfillment of the goals of this chapter; and

7 (c) Specifies in the final order the particular part or parts of  
8 the plan or regulation that are determined to be invalid, and the  
9 reasons for their invalidity.

10 (2) A determination of invalidity is ~~((prospective in effect and  
11 does not extinguish rights that vested under state or local law before  
12 receipt of the board's order by the city or county. The determination  
13 of invalidity does not apply to a completed development permit  
14 application for a project that vested under state or local law before  
15 receipt of the board's order by the county or city or to related  
16 construction permits for that project.~~

17 ~~(3)(a) Except as otherwise provided in subsection (2) of this  
18 section and (b) of this subsection, a development permit application  
19 not vested under state or local law before receipt of the board's order  
20 by the county or city vests to the local ordinance or resolution that  
21 is determined by the board not to substantially interfere with the  
22 fulfillment of the goals of this chapter.~~

23 ~~(b) Even though the application is not vested under state or local  
24 law before receipt by the county or city of the board's order, a  
25 determination of invalidity does not apply to a development permit  
26 application for))~~ remedial and retrospective and applies to any  
27 decision on a project permit that the local government made based on  
28 the project's consistency with the plan or regulation that the board  
29 has determined to be invalid except:

30 ~~((+i))~~ (a) A permit for construction by any owner, lessee, or  
31 contract purchaser of a single-family residence for his or her own use  
32 or for the use of his or her family on a lot existing before receipt by  
33 the county or city of the board's order, except as otherwise  
34 specifically provided in the board's order to protect the public health  
35 and safety;

36 ~~((+ii))~~ (b) A building permit and related construction permits for  
37 remodeling, tenant improvements, or expansion of an existing structure

1 on a lot existing before receipt of the board's order by the county or  
2 city; and

3 ~~((+iii))~~ (c) A boundary line adjustment or a division of land that  
4 does not increase the number of buildable lots existing before receipt  
5 of the board's order by the county or city.

6 ~~((+4))~~ (3) If the ordinance that adopts a plan or development  
7 regulation under this chapter includes a savings clause intended to  
8 revive prior policies or regulations in the event the new plan or  
9 regulations are determined to be invalid, the board shall determine  
10 under subsection (1) of this section whether the prior policies or  
11 regulations are valid during the period of remand.

12 ~~((+5))~~ (4) A county or city subject to a determination of  
13 invalidity may adopt interim controls and other measures to be in  
14 effect until it adopts a comprehensive plan and development regulations  
15 that comply with the requirements of this chapter. A development  
16 permit application may vest under an interim control or measure upon  
17 determination by the board that the interim controls and other measures  
18 do not substantially interfere with the fulfillment of the goals of  
19 this chapter.

20 ~~((+6))~~ (5) A county or city subject to a determination of  
21 invalidity may file a motion requesting that the board clarify, modify,  
22 or rescind the order. The board shall expeditiously schedule a hearing  
23 on the motion. At the hearing on the motion, the parties may present  
24 information to the board to clarify the part or parts of the  
25 comprehensive plan or development regulations to which the final order  
26 applies. The board shall issue any supplemental order based on the  
27 information provided at the hearing not later than thirty days after  
28 the date of the hearing.

29 ~~((+7))~~ (6)(a) If a determination of invalidity has been made and  
30 the county or city has enacted an ordinance or resolution amending the  
31 invalidated part or parts of the plan or regulation or establishing  
32 interim controls on development affected by the order of invalidity,  
33 after a compliance hearing, the board shall modify or rescind the  
34 determination of invalidity if it determines under the standard in  
35 subsection (1) of this section that the plan or regulation, as amended  
36 or made subject to such interim controls, will no longer substantially  
37 interfere with the fulfillment of the goals of this chapter.

1 (b) If the board determines that part or parts of the plan or  
2 regulation are no longer invalid as provided in this subsection, but  
3 does not find that the plan or regulation is in compliance with all of  
4 the requirements of this chapter, the board, in its order, may require  
5 periodic reports to the board on the progress the jurisdiction is  
6 making towards compliance.

7 **Sec. 5.** RCW 80.50.100 and 1989 c 175 s 174 are each amended to  
8 read as follows:

9 (1) The council shall report to the governor its recommendations as  
10 to the approval or rejection of an application for certification within  
11 twelve months of receipt by the council of such an application, or such  
12 later time as is mutually agreed by the council and the applicant. The  
13 council's recommendation shall be based on the council's guidelines in  
14 effect on the date the recommendation is made. If the council  
15 recommends approval of an application for certification, it shall also  
16 submit a draft certification agreement with the report. The council  
17 shall include conditions in the draft certification agreement to  
18 implement the provisions of this chapter, including, but not limited  
19 to, conditions to protect state or local governmental or community  
20 interests affected by the construction or operation of the energy  
21 facility, and conditions designed to recognize the purpose of laws or  
22 ordinances, or rules or regulations promulgated thereunder, that are  
23 preempted or superseded pursuant to RCW 80.50.110 as now or hereafter  
24 amended.

25 (2) Within sixty days of receipt of the council's report the  
26 governor shall take one of the following actions:

- 27 (a) Approve the application and execute the draft certification  
28 agreement; or
- 29 (b) Reject the application; or
- 30 (c) Direct the council to reconsider certain aspects of the draft  
31 certification agreement.

32 The council shall reconsider such aspects of the draft  
33 certification agreement by reviewing the existing record of the  
34 application or, as necessary, by reopening the adjudicative proceeding  
35 for the purposes of receiving additional evidence. Such  
36 reconsideration shall be conducted expeditiously. The council shall  
37 resubmit the draft certification to the governor incorporating any

1 amendments deemed necessary upon reconsideration. Within sixty days of  
2 receipt of such draft certification agreement, the governor shall  
3 either approve the application and execute the certification agreement  
4 or reject the application. The certification agreement shall be  
5 binding upon execution by the governor and the applicant.

6 (3) The rejection of an application for certification by the  
7 governor shall be final as to that application but shall not preclude  
8 submission of a subsequent application for the same site on the basis  
9 of changed conditions or new information.

10 NEW SECTION. **Sec. 6.** The following acts or parts of acts are each  
11 repealed:

12 (1) RCW 36.70B.170 (Development agreements--Authorized) and 1995 c  
13 347 s 502;

14 (2) RCW 36.70B.180 (Development agreements--Effect) and 1995 c 347  
15 s 503;

16 (3) RCW 36.70B.190 (Development agreements--Recording--Parties and  
17 successors bound) and 1995 c 347 s 504;

18 (4) RCW 36.70B.200 (Development agreements--Public hearing) and  
19 1995 c 347 s 505; and

20 (5) RCW 36.70B.210 (Development agreements--Authority to impose  
21 fees not extended) and 1995 c 347 s 506.

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